

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JONATHAN E. PARKS,

Plaintiff,

V.

RON HAYNES, et al.,

Defendant.

CASE NO. 3:17-cv-05884-BHS-DWC

**ORDER TO SHOW CAUSE OR
AMEND**

Plaintiff Jonathan E. Parks, proceeding *pro se* and *in forma pauperis*, filed this civil

rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint

under 28 U.S.C. § 1915A, the Court declines to serve the Complaint but provides Plaintiff leave

to file an amended pleading by December 15, 2017, to cure the deficiencies identified herein.

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BACKGROUND

Plaintiff, who is housed at the Washington State Penitentiary, filed this § 1983 action. It

appears Plaintiff's allegations occurred when he was previously housed at the Clallam Bay

Corrections Center. He alleges that his civil rights were violated when prison staff allegedly

retaliated against him for filing complaints, denying him showers, proper clothing, food, and

1 access to his legal papers and the law library. Dkt. 4 at 14-15. He also claims he was denied
2 adequate food after going on a hunger strike for three days. *Id.* at 14. Though he includes
3 numerous kites and grievances disbursed amongst his Complaint, he does not explain how any
4 particular person or persons violated his rights. *See* Dkt. 4. He requests relief in the form of
5 monetary damages for his denial of food and additional damages for “preventing access to the
6 courts[,] . . . preventing contacting attorney[,] . . . [and] misuse of the [disciplinary] proceeding.”
7 *Id.* at 26.

8 **DISCUSSION**

9 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
10 complaints brought by prisoners seeking relief against a governmental entity or officer or
11 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
12 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
13 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
14 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
15 152 F.3d 1193 (9th Cir. 1998).

16 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
17 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
18 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
19 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
20 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
21 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
22 named defendants caused, or personally participated in causing, the harm alleged in the
23 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

1 Plaintiff's Complaint suffers from deficiencies requiring dismissal if not corrected in an
2 amended complaint.

3 **I. Personal Participation**

4 Plaintiff makes broad allegations that his constitutional rights were violated when prison
5 staff retaliated against him by depriving him of food, clothing, and access to the courts. To state a
6 claim under 42 U.S.C. § 1983, Plaintiff must allege facts showing how a defendant caused or
7 personally participated in causing the harm alleged in the complaint. *Leer v. Murphy*, 844 F.2d
8 628, 633 (9th Cir. 1988); *Arnold*, 637 F.2d at 1355. A person subjects another to a deprivation of a
9 constitutional right when committing an affirmative act, participating in another's affirmative act,
10 or omitting to perform an act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
11 Cir. 1978). Sweeping conclusory allegations against an official are insufficient to state a claim for
12 relief. *Leer*, 844 F.2d at 633.

13 Here, Plaintiff has failed to allege the personal participation of any Defendants. He has
14 provided a list naming all Defendants. Dkt. 4 at 2. However, he does not describe how any
15 Defendants actually deprived Plaintiff of his constitutional rights. He alleges that he was
16 deprived food, showers, clothing, and access to the courts, and that the disciplinary process was
17 unlawfully used against him. *Id.* at 14-15. He further alleges that his legal mail is being tampered
18 with and he has been denied access to legal phone calls as part of a sanction. *Id.* at 15. Though
19 these may amount to allegations of constitutional violations, Plaintiff does not explain how any
20 particular Defendant contributed to these alleged injuries. Rather, he relies on conclusory
21 allegations, stating broadly that his rights were violated. Because Plaintiff has not alleged
22 personal participation by Defendants, he has not yet stated a claim under § 1983 for which relief

1 can be granted. Therefore, the Court orders Plaintiff to show cause or file an amended complaint
2 remedying the deficiencies noted herein.

3 **II. Instruction to Plaintiff**

4 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
5 amended complaint and within the amended complaint, he must write a short, plain statement
6 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
7 person who violated the right; (3) *exactly what the individual did or failed to do*; (4) how the
8 action or inaction of the individual is connected to the violation of Plaintiff's constitutional
9 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
10 *Rizzo v. Goode*, 423 U.S. 362, 371–72 (1976). Further, if Plaintiff intends to include grievances
11 or kites with his amended complaint, they should be attached to the end as exhibits, not
12 distributed throughout the body of his Complaint.

13 Plaintiff shall present the amended complaint on the form provided by the Court. The
14 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
15 and not a copy, it should contain the same case number, and it may not incorporate any part of
16 the original complaint by reference. The amended complaint will act as a complete substitute for
17 the original Complaint, and not as a supplement. The Court will screen the amended complaint to
18 determine whether it contains factual allegations linking each defendant to the alleged violations
19 of Plaintiff's rights. The Court will not authorize service of the amended complaint on any
20 defendant who is not specifically linked to a violation of Plaintiff's rights.

21 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
22 raised herein on or before December 15, 2017, the undersigned will recommend dismissal of this
23 action as frivolous pursuant to 28 U.S.C. § 1915.

CONCLUSION

For the reasons stated above, the Court declines to serve Plaintiff's Complaint at this time. However, the Court provides Plaintiff with an opportunity to file an amended complaint.

The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983 civil rights complaint and for service. The Clerk is further directed to send copies of this Order and Pro Se Instruction Sheet to Plaintiff.

Dated this 13th day of November, 2017.

W. Christel

David W. Christel
United States Magistrate Judge